

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:06-cr-134-01

v.

HONORABLE PAUL L. MALONEY

ERNEST ROBERT GRAY

Defendant.

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MEMORANDUM OPINION AND ORDER

Defendant Ernest Robert Gray has filed a motion for modification or reduction of sentence pursuant to 18 U.S.C. §3582(c)(2) based on the modification of the Drug Quantity Table with respect to cocaine base (crack cocaine).

Section 3582(c)(2) permits a court to reduce the term of imprisonment of a defendant who has been sentenced based on a sentencing range that has subsequently been lowered by the Sentencing Commission. 18 U.S.C. § 3582(c)(2). Amendment 750 of the United States Sentencing Guidelines modified U.S.S.G. § 2D1.1, the Drug Quantity Table with regard to cocaine base (crack cocaine), and U.S.S.G. § 2D2.1(b). These modifications were made retroactive effective November 1, 2011. U.S.S.G. § 1B1.10(c).

The defendant was sentenced to the mandatory minimum of 10 years imprisonment on Counts 5 and 9 and the statutory minimum of 60 months was imposed on Count 8, which statute mandates must run consecutively to all other counts. Although application of Amendment 750 may have reduced the defendant's base offense level, the guideline range has not changed

because of the statutory mandatory minimum. Absent an appropriate motion filed by the Government, the Court has no authority to reduce a sentence below the mandatory minimum. Accordingly, the amendments are of no assistance to the defendant. Therefore,

IT IS HEREBY ORDERED that Defendant Ernest Robert Gray's motion for modification of sentence pursuant to 18 U.S.C. § 3582(c)(2) (ECF No. 35) is **DENIED**.

Date: September 13, 2012

/s/ Paul L. Maloney

Paul L. Maloney

Chief United States District Judge